



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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SDMS Document ID



2030988

APR -7 2004

Ref: 8TMS-G

Randy Siemers
Montana District Council of Laborers
P.O. Box 6382
Helena, MT 59604

Re: Freedom of Information Act Request #08RIN 159-04
Denial of FOIA Request

Dear Mr. Siemers:

This is in response to your FOIA request of March 3, 2004 in which you requested copies of all certified payroll records for Environmental Restoration Inc. and any other EPA contractors employing Davis-Bacon eligible employees involved in the cleanup of the 200 remediated homes in Libby, Montana in 2003 or anytime prior. The only certified payroll records that we have in our possession are for Environmental Restoration, LLC. I have determined that the records in question have been claimed confidential and may contain trade secrets or commercial or financial information which is exempt from disclosure under 5 U.S.C. 552(b)(4). These records also contain personal information related to individual employees such as social security numbers, home addresses and hourly wages. This information is exempt from disclosure under 5 U.S.C. 552(b)(6), as disclosure of this information would constitute a clearly unwarranted invasion of personal privacy.

The certified payroll records contain information related to wages and fringe paid to individual employees by the contractor. These records are required to be submitted to the Agency under the federal labor statutes, see 48 CFR §22-406-6(a). Section 22-406-6(e) provides that:

Contractor payroll records in the Government's possession must be carefully protected from any public disclosure which is not required by law, since payroll records may contain information in which the contractor's employees have a privacy interest, as well as information in which the contractor may have proprietary interest that the Government may be obliged to protect. Questions concerning release of this information may involve the Freedom of Information Act (FOIA).



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The Agency has issued a FOIA Class Determination, Number 1-95, dated July 10, 1995, "Confidentiality of Certain Business Information Submitted by Contractors and Prospective Contractors." Through this Class Determination, the Agency has determined that certain categories of contractor submitted information are presumptively entitled to treatment as Confidential Business Information (CBI) under FOIA. Wage rates (labor rates) are listed as entitled to CBI treatment. In addition, Environmental Restoration has asserted CBI treatment of its payroll records and wage rates.

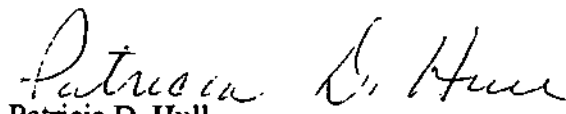
Pursuant to the Agency FOIA regulations, at 40 CFR Part 2, your request is denied as the information is entitled to protection as CBI information and based on personal privacy interests of the employees.

In a discussion with David Schachterle, Associate Regional Counsel for EPA, on April 1, 2004, you indicated that you would be willing to obtain this information in a statistical format. While statistical information may not involve the same privacy and CBI considerations as do the certified payrolls, the Agency simply does not process this information in a statistical format, nor can the agency provide this information to you statistically. The contractor furnishes hard copy certified payrolls in compliance with the contract provisions. Furnishing statistical information would require the Agency to analyze the payroll records and to create new information and documents not currently in the possession of the Agency. Creation of new documents is not required under FOIA.

You may appeal this denial of your request by writing to the Freedom of Information Office Staff, Records, Privacy and FOIA Branch, Office of Information Collection, Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (2822T), NW, Washington, DC 20460. The appeal must be in writing and it must be submitted to the Headquarters FOIA Staff no later than 30 calendar days from the date of this letter. The appeal must clearly identify the determination being appealed, including the assigned FOIA request number.

You should refer to 08RIN 159-04 in any further correspondence concerning this matter. Please contact David Schachterle at (303) 312-6920 if you have any questions concerning this matter.

Sincerely,


Patricia D. Hull
Assistant Regional Administrator
Technical Management Services Division

bcc: Vicki Ferguson, FOIA Coordinator
David Schachterle, Associate Regional Counsel, 8RC
Lisa Walker, Contract Specialist, 8TMS-G